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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/441,322 05/15/95 ADAMS

B A-61182/JC

EXAMINER

CRUNIN, S

C2M1/0821

ART UNIT PAPER NUMBER

6

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DATE MAILED: 08/21/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on \_\_\_\_\_  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice of Draftsman's Patent Drawing Review, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  \_\_\_\_\_

Part II SUMMARY OF ACTION

1.  Claims 1-25 are pending in the application.

Of the above, claims None are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims 1-25 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).

12.  Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

EXAMINER'S ACTION

Art Unit:

**DETAILED ACTION**

*Specification*

1. The disclosure is objected to because of the following informalities: The Cross-Reference to Related Applications section of the specification needs to be updated. Specifically the reference to the “attorney’s docket number A56953-2/JC” must be changed to reflect the application serial number.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 8 applicant’s use of the expression “of the type” is unclear and indefinite since the structure that comprises “of the type” cannot be determined.

In claim 1 lines 4-5 the expression “internal means on skirt” is incorrect. The word -- said -- should be inserted before the word “skirt”.

*Double Patenting*

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy

Art Unit:

reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,513,763 in view of Cloyd. U.S. Patent 5,513,763 discloses and claims the invention set forth in the claims except that the central well 51 is closed by a cap 53 instead of the well having a scored portion in its bottom which is self closable. Cloyd teaches a similar closure 12 having a central well 27 with a scored bottom 28 which opens when a probe is inserted and recloses after the probe is removed. It would have been obvious to one of ordinary skill in the art to form the well of U.S. Patent 5,513,763 with a scored bottom as taught by Cloyd instead of installing a separate cap in order to obtain the benefit of reducing the number of parts of the closure and further obtain the benefit of the closure being self sealing in the event the probe was removed prior to the container being empty.

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*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other self sealing closures for containers with features similar to those disclosed and claimed by applicant.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen K. Cronin whose telephone number is (703) 308-4296.



Stephen K. Cronin

Primary Examiner

August 16, 1996